

BEFORE THE IOWA REAL ESTATE APPRAISER EXAMINING BOARD

<p>IN THE MATTER OF:</p> <p>MARK E. HANNA,</p> <p>Respondent.</p>	<p>Case No. 16-29</p> <p>NOTICE OF HEARING AND STATEMENT OF CHARGES IN A NON-LICENSEE, CIVIL PENALTY CASE</p>
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The Iowa Real Estate Appraiser Examining Board (“Board”) issues this Notice of Hearing pursuant to Iowa Code sections 17A.12(2) and 543D.21(5) and Iowa Administrative Code rule 193—16.5(3). The Board has jurisdiction in this matter pursuant to Iowa Code chapters 17A, 272C, and 543D. Respondent is a licensed real-estate salesperson in the State of Iowa. This non-licensee, civil penalty case concerns Respondent’s attempt to improperly influence the development, reporting, result, or review of a real estate appraisal in violation of Iowa Code sections 543D.18A(1) and 543D.21(4)(b), and Iowa Administrative Code rule 193F—16.2(7).

A. TIME, PLACE, AND NATURE OF HEARING AND HEARING PROCEDURES

1. **Hearing.** A contested case hearing, which shall be conducted in the same manner as provided for disciplinary proceedings involving a licensee under Iowa Code chapter 543D, *see* Iowa Code § 543D.21(5) and Iowa Admin. Code r. 193F—16.5(3), shall be held before the Board on the **30th day of March, 2017, at 1:00 o’clock, p.m.**, at 200 E. Grand, Ste. 350, Des Moines, IA 50309.

2. **Answer.** Within 20 days of the date you are served with this Notice, you must file an answer to the charges of they type specified in Iowa Administrative Code rule 193—7.9.

3. **Prehearing Conference.** A prehearing conference will be held by telephone on **16th day of March, 2017, at 9:00 o’clock, a.m.**, before an Administrative Law Judge from the Iowa Department of Inspections and Appeals (“ALJ”). You are responsible for notifying the Board office of the telephone number at which you or your counsel may be reached. Board rules on prehearing conferences may be found at Iowa Administrative Code rule 193—7.21.

4. **Presiding Officer.** The full Board shall serve as presiding officer at hearing. The Board may request that an ALJ make initial rulings on prehearing matters, and be present to assist and advise the Board at hearing, as described in Iowa Administrative Code rule 193—7.10(4). A request that an ALJ preside at the hearing must be filed within 20 days of the date you are served with this Notice pursuant to Iowa Code section 17A.11 and 193 Iowa Administrative Code 7.10(2).

5. **Hearing Procedures.** Board rules on hearing procedures may be found at Iowa Administrative Code chapter 193—7 and Iowa Administrative Code chapter 193—8. You have the right to respond to the charges, produce evidence on your behalf, cross-examine witnesses, and examine any documents introduced at hearing. Consult rule 193 Iowa Administrative Code 7.22 if you need to request an alternative time or date. The hearing will be open to the public.

6. **Default.** If you fail to appear at hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence, in accordance with Iowa Code section 17A.12(3) and Iowa Administrative Code rule 193—7.27.

7. **Prosecution.** Civil penalty cases of this nature are prosecuted by an Assistant Attorney General acting on behalf of the public interest (the State). Copies of all pleadings shall be filed with the Board, with copies mailed to:

Luke Dawson
Assistant Attorney General
Iowa Attorney General's Office
2nd Floor, Hoover State Office Building
Des Moines, Iowa, 50319.

Mr. Dawson can also be reached by phone at (515)414-6187 or e-mail at luke.dawson@iowa.gov.

8. **Respondent's Counsel.** Copies of all pleadings filed with the Board shall be provided to:

Drew H. Kouris
Suite 2-C, Kiel Building
501 South Main Street
Council Bluffs, IA 51503

Mr. Kouris can also be reached by phone at (712)323-3626 or email at drew@kourislaw.com.

9. **Communications.** You may not contact Board members by phone, letter, facsimile, email, or in person about this Notice of Hearing and Statement of Charges. Board members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve upon all parties in the case. You should direct any questions to: Assistant Attorney General, Luke Dawson, *see* Section 7 (Prosecution), above, for contact information; or, Brandy March, the Board's Executive Officer, at (515)725-9025.

B. LEGAL AUTHORITY AND JURISDICTION

1. **Jurisdiction.** The Board has jurisdiction in this matter pursuant to Iowa Code chapters 17A, 272C, and 543D.

2. **Legal Authority.** If any of the allegations against you are founded, the Board has the authority to impose a civil penalty in an amount not to exceed \$1,000.00 against you under: Iowa Code chapters 17A and 272C; Iowa Code sections 543D.18A(1) and 543D.21(4)(b) and (5); and Iowa Administrative Code rules 193—7.27, 193F—16.1, and 193F—16.2(7).

C. STATUTES AND RULES INVOLVED

COUNT I ATTEMPT TO IMPROPERLY INFLUENCE THE DEVELOPMENT, REPORTING, RESULT, OR REVIEW OF A REAL ESTATE APPRAISAL

Respondent is charged with, as a real estate broker or salesperson or other person with an interest in a real estate transaction or its financing, attempting to improperly influence the development, reporting, result, or review of a real estate appraisal in violation of Iowa Code sections 543D.18A(1) and 543D.21(4)(b), and Iowa Administrative Code rule 193F—16.2(7).

D. FACTUAL CIRCUMSTANCES

1. Respondent is a licensed real estate salesperson in the State of Iowa.
2. Respondent's license is currently "Active" and will next expire on December 31, 2019.
3. During 2016, Respondent served as the real estate salesperson for a home and associated land (referred to collectively herein as the "Home") located in Sioux City, Iowa.
4. On or around March 30, 2016, while Respondent was serving as the real estate salesperson for the Home, and while the assigned certified appraiser was in the process of appraising the Home, Respondent contacted said appraiser by email and provided the appraiser with comparable properties, stating in connection therewith: "Good Luck, I don't think you will have much difficulty making this one come in!"
5. On or around April 8, 2016, after the appraisal assignment was completed and the property had been appraised at a value less than the agreed-upon sales price between the buyer and seller, but during the period when the appraiser could have updated/changed the value opinion for the Home, Respondent again reached out to the certified appraiser by email noting the property was appraised several months ago by a different appraiser at or above the agreed-upon sales price, and further stating: "There were plenty of comps out there to make this happen"; and "This deal will not come together, sometimes YOU do not realize just how much Power they give you clowns."
6. In a subsequent email that same day, Respondent again expressed frustration with the certified appraiser's opinion of value, asking: "Why didn't this come together?"; and noting

“We have been trying to sell this property for 6 months.”

E. SETTLEMENT

This matter may be resolved by settlement agreement. The procedural rules governing the Board’s settlement process are found at Iowa Administrative Code rule 193—7.42. If you are interested in pursuing settlement of this matter, please contact Assistant Attorney General, Luke Dawson. *See* Section 7 (Prosecution), above, for contact information.

F. FINDING OF PROBABLE CAUSE, NOTICE OF INTENT TO ISSUE ORDER IMPOSING CIVIL PENALTY, AND RESPONDENT’S REQUEST FOR HEARING

The Board found probable cause to file charges on November 21, 2016. On November 23, the Board issued a Notice of Intent Impose Civil Penalty and Respondent’s Right to Hearing, attached as Exhibit A, pursuant to Iowa Code sections 543D.18A(1) and 543D.21(3)–(5) evidencing its intent to impose a civil penalty against Respondent in an amount not to exceed \$1,000.00. On December 19, Respondent requested a hearing in this matter pursuant to Iowa Code section 543D.21 and 193F Iowa Administrative Code 16.5(1).

This Notice of Hearing and Statement of Charges is Filed and issued

On the 10th day of January, 2017



Brandy March, Executive Officer
Iowa Real Estate Appraiser Examining Board
200 E. Grand, Ste. 350
Des Moines, IA 50309
Phone: (515)725-9025
brandy.march@iowa.gov

EXHIBIT A
Notice of Intent Impose Civil Penalty and Respondent's Right to Hearing

BEFORE THE IOWA REAL ESTATE APPRAISER EXAMINING BOARD

IN THE MATTER OF:

MARK E. HANNA,

Respondent.

Case No. 16-29

NOTICE OF INTENT TO IMPOSE CIVIL
PENALTY AND RESPONDENT'S RIGHT
TO HEARING

YOU ARE HEREBY NOTIFIED that the Iowa Real Estate Appraiser Examining Board (Board) intends to issue an order pursuant to Iowa Code sections 543D.18A(1) and 543D.21 (2015) imposing a civil penalty in an amount not to exceed \$1,000.00 based on the following:

1. Mark E. Hanna ("Respondent") is a licensed real estate salesperson in the State of Iowa. In that capacity, and as a person with an interest in a real estate transaction or its financing, Respondent had the following interactions with a certified appraiser performing an appraisal:

a. At the start of the appraisal assignment, Respondent provided the certified appraiser with comparable properties via email and in connection therewith stated "I don't think you will have much difficulty making this one come in!"

b. After the appraisal assignment was completed and the property was appraised at a value less than the agreed-upon sales price between the buyer and seller, Respondent again reached out the certified appraiser via email noting the property was appraised several months ago by a different appraiser at or above the agreed-upon sales price, stating "[t]here were plenty of comps out there to make this happen," and further stating "[t]his deal will not come together, sometimes YOU do not realize just how much Power they give you clowns."

c. In a subsequent email, Respondent again expressed frustration with the certified appraiser's valuation, asking "Why didn't this come together" and noting "[w]e have

been trying to sell this property for 6 months.”

2. Respondent attempted to improperly influence the development, reporting, or result of a real estate appraisal through a request that the appraiser report a predetermined valuation and/or acts attempting to impair the appraiser’s independence, in violation of Iowa Code section 543D.18A(1). While “[a] person does not violate . . . section [543D.18A] *solely* by asking an appraiser to consider additional, appropriate property information, or to provide further detail, substantiation, or explanation for the appraiser’s value conclusion, or to correct errors in the appraisal report, or by withholding payment of an appraisal fee based on a bona fide dispute regarding the appraiser’s compliance with the appraisal standards,” here Respondent provided additional property information to the appraiser, *and* in advance of the performance of the appraisal made statements attempting to influence the valuation/outcome, *and* after the appraisal was completed but during the period when it still could have been modified/updated made statements and provided information attempting to influence the valuation/outcome. (Emphasis added.).

3. The public depends on appraisers to maintain independence and perform appraisal services in a disinterested and impartial matter, as more fully set forth in Iowa Code section 543.18(1).

4. The Board has the authority to impose a civil penalty for a violation of Iowa Code section 543D.18A(1) pursuant to Iowa Code section 543D.21(4)(b).

5. The Board will issue an order imposing civil penalty in the amount of \$1,000 if Respondent does not timely request a hearing, as provided in Iowa Code section 543D.21(5).

6. Respondent may request a hearing within thirty (30) days of the date this Notice of Intent is mailed through restricted, certified mail, or within thirty (30) days of personal service. A request for hearing must be made in writing to the Board to the attention of:

Brandy March
Board Administrator, Iowa Real Estate Appraiser Examining Board
Professional Licensing Bureau
200 E. Grand, Ste. 350
Des Moines, IA 50309

Such request will be deemed made on the date of the United States postmark or the date of personal service. Respondent should consult Board rules at 193F Iowa Administrative Code chapter 16.

7. If a request for hearing is timely made, a separate notice of hearing shall issue. The Board will conduct a public hearing under the same contested case rules that are applicable to disciplinary cases against certified real estate appraisers. If the Board finds the evidence at hearing establishes the allegations by a preponderance of the evidence, the Board may impose a civil penalty in an amount not to exceed \$1,000.

8. If a civil penalty is imposed and not paid within thirty days of entry of the order, the Board shall notify the Attorney General and the Attorney General may commence an action to recover the amount of the penalty, including reasonable attorney fees and costs. An action to collect a civil penalty may be joined with an action to enjoin Respondent from further violations of Iowa Code chapter 543D. If unpaid after thirty days, the Board may also submit the debt to the offset program under Iowa Code section 8A.504.

Issued this 23rd day of November, 2016



Brandy March
Board Administrator, Iowa Real Estate Appraiser Examining Board
Professional Licensing Bureau
200 E. Grand, Ste. 350
Des Moines, IA 50309

cc: Luke Dawson, Assistant Attorney General
Drew Kouris, Attorney at Law